

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No. 776/2022
CM (5733/2022)
CM (5948/2022)
CM (2376/2022)
CM (6535/2022)
CM (6536/2022)

Saanvi Andotra

.....Appellant(s)/Petitioner(s)

Through: Mr. H. C. Jalmeria, Advocate.

Vs

Union of India and others

..... Respondent(s)

Through: Mr. Vishal Sharma, DSGI
Mr. Sumeet Bhatia, GA.
Mr. Suraj Singh, GA
Mr. Supreet Singh Johal, Adv. for intervener.

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER
15.11.2022

CM No. 6535/2022

1. The present application has been preferred by the applicant seeking incorporation as party respondent in the writ petition.
2. For the reasons stated in the application and the arguments advanced by the learned counsel for the applicant before this Court, coupled with the fact that the learned counsel for the respondents as well as the petitioner has no objection in allowing the application, the same is allowed and the applicant is impleaded as party respondent in the array of the respondents.
3. Registry to make necessary change in the memo of the parties.
4. Application stands disposed of.

CM No. 6536/2022

5. The present application has been preferred by the applicant, namely, Amandeep Singh, S/o Late S. Charan Singh, R/o Nanowali, P.O. Chakroi,

Tehsil Suchetgarh, District Jammu for vacation of interim order dated 18.04.2022.

6. The applicant is aggrieved of the order dated 18.04.2022 passed by this Court, whereby communication dated 30.11.2017 issued by respondent No. 2-Department of Ex-Servicemen Welfare D (Res-II) Ministry of Defence, has been stayed to the extent pertaining to the priority amongst the wards of serving personnel and ex-servicemen, without prejudice to the ongoing selection process. The applicant being a qualified doctor, participated in the NEET-PG (National Eligibility Entrance Test-Post-Graduate) Examination, 2022 in pursuance of the Notification dated 04.02.2022 issued by the National Board of Examination in Medical Sciences and has qualified the NEET-PG 2022 bearing Roll No. 2266178029 having attained the total score of 325 marks.
7. It has further been projected by the learned counsel for the applicant that in furtherance of the NEET-PG 2022 result having been declared by the National Board of Examination in Medical Sciences on 01.06.2022 and the respondent No. 4-J&K Board of Professional Entrance Examinations, vide Notification No. 050-BOPEE of 2022 dated 07.07.2022 issued a roll number wise list of candidates of UT of J&K and Ladakh, who have appeared in NEET PG-2022 for MD/MS/PGD conducted by the National Board of Examinations.
8. It has been contended by the applicant that the schedule for online counselling of eligible candidates of NEET PG (MD/MS/PGD and MDS-2022) for filing up of online preferences was issued by respondent No. 4 vide Notification dated 04.10.2022 inviting eligible NEET-PG

(MD/MS/PGD and MDS-2022) candidates for filing up of online preferences for allotment of Colleges/Courses, which was to be started w.e.f. 08.10.2022 to 10.10.2022 (First Round Counseling). The applicant was figuring at serial No. 621 in the Annexure-A to the notification dated 04.10.2022 (supra).

9. It has further been contended that after having participated in the online counseling, to the utter dismay and disbelief of the applicant, the respondent No. 4 vide notification dated 30.09.2022 had blocked one seat of MD/MS in Children of Defence Personnel (CDP) Category during first round of counseling for the reason that the matter is sub-judice before this Court. It has further been contended by the applicant that pursuant to the Notification dated 07.07.2022, respondent No. 4 issued another Notification dated 20.09.2022, whereby the process for online registration of the eligible candidates was notified along with the relevant dates and the applicant being priority one CDP candidate has a vested right in the said seat, which had been taken away by the respondents without providing him an opportunity of rebuttal to clarify the same.
10. Learned counsel for the applicant further submits that various representations have also been filed in this regard but nothing tangible has been done and accordingly, the applicant was left with no option but to file an application seeking vacation of stay order, which is harshly operating against him.
11. It has also been projected by learned counsel for the applicant that the writ petitioner is not a candidate, who has either undergone or has to undergo PG/MD/MS Course. She is a candidate, who is seeking admission into the

MBBS Course being an undergraduate course in the CDP category being a daughter of a serving Army Personnel and being a priority No. VIII CDP category candidate. She has no grievance, whatsoever, against the priority list which otherwise has been recommended first by respondent No. 2 vide communication dated 30.11.2017 and thereafter implemented against the applicant.

12. Learned counsel for the applicant has further pointed out that respondent No. 4 under the guise of the interim order has stalled admission process for the CDP candidates as a consequence of which, the applicant, who is a priority one CDP category candidate and thus, has prayed for vacation of the interim order dated 18.04.2022 passed by this Court.
13. Keeping in view the controversy involved in the writ petition and urgency projected by the respondents, the same is taken up for final consideration.

WP(C) No. 776/2022

14. The present writ petition has been preferred by the petitioner, who was a student of 12th class with Medical subjects. She happens to be the daughter of a Serving Lt. Col. Arjun Andotra presently posted at 9 INF DIV ORDANCE UNIT C/O 56 APO.
15. It has further been pointed out by the learned counsel for the petitioner that the petitioner is entitled to all the benefits and schemes provided to the Children of Defence Personnel by the Government of India as well as by the State and UT Governments.
16. Learned counsel for the petitioner further contended that all the wards of Defence Personnel get these benefits through the Ministry of Defence and the children of the Defence Personnel are getting reservations/preferences

for studies in various professional courses including in the MBBS course in Medical Colleges located in various States/Union Territories of the country including in the Union Territory of J&K on merit inter-se basis. There was no prioritization within the CDP category, rather there was level playing field for merit for all CDP candidates.

17. The petitioner is aggrieved of the policy framed by the Ministry of Defence, Department of Ex-Servicemen Welfare, Government of India by virtue of which a communication has been addressed by the concerned Joint Secretary, to the Chief Secretaries/Administrators of all State/UTs vide communication dated 30.11.2017, wherein inter-se priority for reservation/preference to the wards of Armed Forces Personnel UT of J&K for admission to Medical/Professional Courses have been prescribed. Through the medium of this writ petition, the petitioner has sought the following relief, which is reproduced as under:

“CERTIORARI

Calling for the record of and quashing

- (i) ***The Communication F.No.6 (I)/2017/ D/(Res-II) dated November 30, 2017 issued by the respondent no. 2 by virtue of which the Chief Secretaries/Administrators of all States/UTs have been asked to follow Inter-se priority for reservation/preference to the wards of Armed Forces personnel by States/UTs for admission to Medical/Professional/ Non-Professional Court as per details Enumerated in the communication. Prayer for quashing the same to the extent it places wards of Ex-servicemen at higher priority (no. VI) and wards of Serving Personnel at lower priority (no. VIII), discriminatingly, irrationally, illogically in violation of the principles of equality provided under Article 14 of the Constitution and also against the spirit and motive force for providing reservation/preference to the wards of the Serving personnel in Armed Forces,***
- (ii) ***he S.O. no. 277 notified vide No. SWD-BCC/37/2021-01 dated 13.08.2021 issued by the Department of Social welfare of Union Territory of Jammu and Kashmir whereby rule nos. 14 and 15 of J&K Reservation Rules 2005 have been amended providing for giving reservation to children of Defence Personnel in***

accordance with Inter-se priority as may be notified by the Department of Ex Servicemen Welfare, Ministry of Defence, Government of India,

(iii) the Communication of Director Sainik Welfare, J&K, Ambphala Jammu, No. 536/ADM/DSW/7862-76 dated 12.11.2021 addressed to the J&K Board of Professional Entrance Examinations(BOPEE) whereby BOPEE has been requested to follow the guidelines as per priority laid down by the Department of Ex Servicemen Welfare, Govt. of India, Ministry of Defence vide their letter no. F.No.6(l)/2017/ D/(Res-II) dated November 30, 2017,

(iv) Notice no:- 083-BOPEE of 2021 dated 16.12.2021 issued by the J&K Board of Professional Entrance Examinations, whereby it has been provided "the reservation to the Children of Defence Personnel (CDP) shall be governed inter-se priorities as may be notified by the department of Ex-servicemen Welfare, Ministry of Defence, Government of India"

PROHIBITION

Restraining the respondent J&K BOPEE from providing reservation to GDP in accordance with discriminatory priority suggested by the Department of Ex-Servicemen Welfare D(Res-II), Ministry of Defence, Govt. of India vide impugned Communication F.No.6(l)/2017/ D/(Res-II) dated November 30, 2017,

MANDAMUS

Commanding upon the respondents to:

- (I) Provide priority to the Children of Serving Defence Personnel over those of the Ex-Servicemen,*
- (ii) Or to provide level playing field to all the children of Serving and Ex-Servicemen Defence Personnel as it existed earlier."*

18. This Court vide interim order dated 18.04.2022 has been pleased to observe as under:

"Despite opportunity to file short affidavit to oppose the prayer made in the application for grant of interim relief, the respondents has not filed the response.

The petitioner, who is daughter of a serving Army Personnel, has filed the present petition whereby the communication bearing F. No. 6(1)/2017/D(Res.II) dated 30.11.2017 issued by the respondent No. 2 has been impugned. By virtue of said communication, the Chief Secretaries/Administrators of all States/Union Territories have been asked to follow inter se priority for reservation/preference to the wards of Armed Forces personnel by States/UTs for admission to Medical/Professional/NonProfessional Courses as per details numerated in the aforesaid communication. On the basis of said communication, S.O. 277 dated 13.08.2021 has been issued by the Department of Social Welfare, Union Territory of Jammu and

Kashmir. The communication of Directorate of Sainik Welfare, Jammu and Kashmir dated 12.11.2021 has been addressed to the Jammu and Kashmir Board of Professional Entrance Examinations (BOPPE) whereby the BOPPE Sr. No. 158 2 WP(C) No. 776/2022 has been requested to follow the guidelines as per priority laid down in the communication dated 30.11.2017.

The sole grievance of the petitioner in the present petition is that the distinction between the wards of the serving personnel of the armed forces as well as ex-servicemen is discriminatory in nature.

Mr. H. C. Jalameria, learned counsel for the petitioner places reliance upon the judgments in case tilted, Chief Secretary of Tamil Nadu and others vs D. Kuralarasan.

List on 27.06.2022.

Meanwhile, till next date before the Bench, communication dated 30.11.2017 (supra) to the extent pertaining to the priority amongst the wards of serving personnel and ex-servicemen shall stay without prejudice to the ongoing selection process.”

19. Feeling aggrieved of the same, an application has also been preferred by respondent No. 4 seeking vacation/modification of the interim order mentioned (supra).
20. Mr. Sumeet Bhatia, learned GA appearing on behalf of the applicant/BOPEE submits that BOPEE is a counselling authority in the UT of J&K, which is mandated with the job of conducting the counselling in various courses like UG NEET, PG NEET and B.Sc Nursing, B.Sc. Paramedical and B.Sc. Technology courses and CET and facilitate admissions in various government/private professional colleges of the UT of J&K in terms of the Acts and Rules passed and amended from time to time and in consideration of the regulations framed by the various regulatory authorities at UT and National Level and the BOPEE is only an executing body. It is further submitted that all the counselling in above mentioned courses are to be completed within the prescribed schedule given by various authorities.

21. It is further pointed out by Mr. Bhatia that the BOPEE is presently conducting the counselling in B.Sc. Nursing, B. Sc. Paramedical and B. Sc. Technology courses 2022 vide Notification No. 064- BOPEE of 2022 dated 23.09.2022, whereby the Board has specifically mentioned in note (i), which reads as under:

“the Board shall not fill CDP category seats during online round of counselling as the matter is sub-judice and is lying in the Hon’ble High Court of J&K and Ladakh and shall be reserved for the candidates belonging to that category. Further, these seats shall be filled during 2nd/3rd round of counselling or as and when decided by the Hon’ble High Court of J&K/Ladakh, which will be earlier”

22. It is further contended by Mr. Bhatia that the JKBOPEE would not be in a position to fill any seat beyond the cut off date prescribed in the above mentioned schedule and any unfilled seat will get wasted and similarly, the applicant/JKBOPEE has received the schedule for NEET-PG 2022 where the last cut off date for PG-NEET is 25.11.2022. Further, BOPEE has received schedule from the All India Council for Technical Education whereby 25.10.2022 was the cut off date for admission in CET courses and because of the interim direction dated 18.04.2022 passed by this Court, JKBOPEE is not in a position to fill the CDP category seats and at the same time BOPEE could not fill any seat beyond the cut off dates given in the schedules by the prescribed authorities and any unfilled seat beyond the cut off date given in the schedule gets wasted and is detrimental to the career of many students.
23. As per the record, no reply till date has been filed by respondent Nos. 1 & 3 which are the contesting parties in the present petition. However, the Union of India is being represented by Mr. Vishal Sharma, learned DSGI, who has

vehemently argued in absence of reply that the interim order is harshly operating against the candidates belonging to the CDP category pertaining to NEET and other selections and the interim order passed by this Court has serious ramifications, which is detrimental to the rights and interests of various aspiring candidates belonging to the said category.

24. Mr. Vishal Sharma, learned DSGI has further argued that the present writ petition has been rendered infructuous and is not maintainable in light of the fact that the petitioner through the medium of the present petition has called in question the policy framed by the Ministry of Defence Department of Ex-Servicemen Welfare Government of India dated 30.11.2017 relating to the inter-se priority, which has been **superseded, now, by the subsequent policy issued by the Government of India, Ministry of Defence Department of Ex-Servicemen Welfare dated 21.05.2018 with the approval of the Hon'ble Raksha Mantri with regard to the inter-se priority in the reservation. He further submits that the aforesaid policy is in supersession of earlier policies dated 19.05.2017 and 30.11.2017** and copy of the said policy has been supplied to this Court which has been taken on record.

25. Learned counsel for the BOPEE has also placed on record a copy of the status report with regard to the schedule of the counseling and the number of seats in CDP category (UG/PG and other courses). The course wise details pertaining to the reserved category of Children of Defence Personnel has been given as under:

S. No.	Course	%age of reservati on	Total no of seats	Remarks
1	Postgraduate	2%	05	Clubbed category

	MD/MS/PGD		seats	of CDP/JKPM
2	Under- graduate	3%	MBBS-24 seats	CDP Category alone
3	B. Sc Nursing	3%	23 seats	CDP category alone
4	B.Sc Paramedical	3%	17 seats	CDP category alone
5	B.Sc Technology	3%	02 seats	CDP category alone

26. It is further stated in the status report that the PG NEET counselling of round 1 and round 2 has been completed and as per the J&K Reservation Rules 2005, 2% seats are to be given to the CDP and JKPM, which is a clubbed category and 5 seats are to be allotted to the above mentioned category, out of which 4 seats have already been allotted to the JKPM candidates as per their merit and preferences and one seat has been blocked for the CDP candidate as per merit in the clubbed category of CDP/JKPM category in compliance to the interim direction passed by this Court dated 18.04.2022 in the subject matter. It is further submitted that preferences for First Round of online Counselling for Postgraduate MD/MS/PGD were offered to the candidates w.e.f. 08.10.2022 to 10.10.2022 and the selection list was issued on 21.10.2022. The 2nd round of counselling for postgraduate MD/MS/PGD was held on 09.11.2022 and the list thereof was issued on 11.11.2022.

27. It is also stated in the status report that the contempt petition (Civil) Diary No. 35224/2022 arising out of impugned final judgment and order dated 31.02.2022 in WP(C) No. 174/2022 passed by the Hon'ble Supreme Court of India in the case titled, Samreedhi Nath and others (petitioners) vs Suresh Chandra Sharma and others (respondents) was listed on 11.11.2022 regarding the failure of completion of second round of counselling in

various States and Union Territories, as a result of which, mop up round of counselling could not take place without the anterior stage being completed by all States and UTs and the date of mop up round in All India Quota (AIQ) and State Quota seats are to be notified by the Medical Counselling Committee (MCC), Government of India in the above titled contempt petition and the same is awaited.

28. It is further stated that in UG-NEET, 3% seats are to be given to the CDP category as per the JK Reservation Rules 2005, which was 28 (24 in MBBS and 04 in BDS courses) seats are to be allotted in Sessions 2022-23 out of which 12 seats are to be given to the females and 12 seats to males. However, the online preferences for the 1st round of counselling have already been offered by the eligible candidates with effect from 04.11.2022 to 06.11.2022 and the provisional selection list is to be notified shortly and as per the schedule issued by the National Medical Council, 16.12.2022 is the last date for the completion of the admission process in NEET-UG 2022-2023.
29. It is further submitted that in BSc Nursing course, 3% seats are to be given to the CDP category as per the JK Reservation rules 2005, which is 23 seats for session 2022-23 and in B.Sc Paramedical course, 3% is to be given to the CDP category as per the JK Reservation rules 2005, which are 17 seats for session 2022-23. In BSc Technology, 3% seats are to be given to the CDP category as per the JK Reservation rules 2005, which are 2 seats for the session 2022-23. It is stated that as per the schedule provided by the India Nursing Council, last date of admission for Nursing Programmes 2022-23 is 31st December, 2022 and in the said courses preferences have

already been offered by the eligible candidates and provisional selection list is to be notified shortly.

30. I have heard learned counsel for the parties and perused the record.
31. In light of the aforesaid development, which has been brought to the notice of this Court with particular reference to the issuance of the new policy dated 21.05.2018 issued by Ministry of Defence Department of Ex-Servicemen with regard to the supersession of earlier policy, copy of which has been circulated to all States/Union Territories, the present petition does not survive and the same is, accordingly, dismissed without commenting upon the merits of the case, with a liberty to the petitioner to seek appropriate remedy available under law to call in question the aforesaid police dated 21.05.2018.
32. Faced with this situation, learned counsel for the petitioner seeks withdrawal of the present writ petition with a liberty to file afresh, in order to throw challenge to the latest policy issued by Ministry of Defence, Department of Ex-Servicemen Welfare dated 21.05.2018, which has been issued in supersession of the earlier policy issued by Department of Ex-Servicemen Welfare, Govt. of India, Ministry of Defence vide letter No. F. No. 6(1)/2017/D/ (Res-II) dated 30.11.2017.
33. However, with a view to protect the interest of the petitioner so that grave prejudice is not caused to the petitioner, one seat in MBBS Course for the current session under NEET be kept reserved for the petitioner for two weeks from today or till the petitioner files a fresh writ petition as prayed for challenging the fresh policy issued by the Ministry of Defence

Department of Ex-Servicemen Welfare dated 21.05.2018, whichever is earlier and the continuance/extension of the interim order insofar as reserving one seat in MBBS under CDP category will be subject to the further orders, if any, passed by this Court.

34. In view of the above, the present writ petition is dismissed as withdrawn with the liberty as prayed for.
35. Disposed of along with all connected applications.

(Wasim Sadiq Nargal)
Judge

Jammu
15.11.2022
Shivalee

Whether the order is speaking: yes

Whether approved for reporting: Yes

